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**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Southern Ambulance Builders, Inc.

File: B-236615

Date: October 26, 1989

DIGEST

Bidder's designation of a chassis manufacturer that does not make an 8-cylinder engine meeting the solicitation's specifications does not render the bid nonresponsive because the bidder took no exception to the specifications; the manufacturer information was requested solely to provide for possible inspection during contract performance and involves a matter of responsibility, information concerning which may be provided any time prior to award.

DECISION

Southern Ambulance Builders, Inc., protests the U.S. Army Tank-Automotive Command's award of a contract for ambulances to C.R.S. Coach, Inc., under invitation for bids (IFB) No. DAAE07-89-B-J009. Southern alleges that C.R.S.' bid was nonresponsive because the manufacturer it listed in its bid does not produce the type of engine required under the IFB. The protester also contends that C.R.S. should not have been found responsible.

We deny the protest in part and dismiss it in part.

The solicitation, as amended, was for 70 ambulances, each with an 8-cylinder diesel engine. Clause E-2 of the IFB, entitled "Inspection and Acceptance Instructions--Commercial Vehicles," required each bidder to furnish the name and address of its chassis manufacturer. In its bid, C.R.S. named Dodge as its chassis manufacturer. After bid opening, in correspondence with the Army, Southern argued, and the Army subsequently determined, that Dodge does not make an 8-cylinder diesel engine that would meet the specifications. When the Army questioned C.R.S. in this regard, C.R.S. "updated" its supplier to Chevrolet without any change in its price. Chevrolet does produce the 3 required chassis and engine.

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Southern protested to the Army that the 8-cylinder engine requirement and the identification of the chassis manufacturer are material aspects of the IFB, and that C.R.S.' bid was nonresponsive because it listed a manufacturer that could not comply with the specifications. Southern also argued that C.R.S.' bid was at least ambiguous. The contracting officer found that C.R.S.' bid was responsive because nothing on the face of the bid took exception to the requirement for an 8-cylinder engine. Award was made to C.R.S. This protest, based on the same grounds, followed.

Responsiveness concerns whether a bidder has unequivocally offered to provide the supplies or services in conformity with all material terms and conditions of a solicitation. Midwest Contractors, Inc., et al., B-231101 et al., Aug. 8, 1988, 88-2 CPD ¶ 118. Responsibility, on the other hand, refers to a bidder's apparent ability and capacity to perform. See Montgomery Elevator Co., B-220655, Jan. 28, 1986, 86-1 CPD ¶ 98.

Here, there was no IFB requirement for the submission of data concerning the type of engine that the manufacturer would supply, and none was submitted. The record shows that Clause E-2 of the IFB requested bidders to identify the chassis manufacturer solely for the purpose of permitting the Army to locate the production facility in the event the Army chose to inspect chassis production. Clause E-2 did not purport to obligate the bidders to a specific place or method of production but, as noted above, solicited information that the Army could use for inspection purposes. We note that nothing on the face of C.R.S.' bid took exception to any of the specifications. In these circumstances--where the bidder has designated a manufacturer in its bid that does not make a product meeting the solicitation's specifications--we have held that the bid is not nonresponsive so long as the bidder also has not taken exception to the solicitation. See Western Roofing Service, B-234314.2, May 22, 1989, 89-1 CPD ¶ 486.

The bidder's ability to perform the contract in accordance with the specifications, as indicated here by its choice of chassis manufacturer, is a matter of the bidder's responsibility. See id. Information concerning the bidder's responsibility may generally be provided any time prior to award. Norfolk Dredging Co., B-229572.2, Jan. 22, 1988, 88-1 CPD ¶ 62. In this regard, the clause did not limit the contractor's right to change the production points of its chassis manufacturer; in other words, the information was solicited solely for contract administration purposes. We therefore find that it was proper for the agency to allow

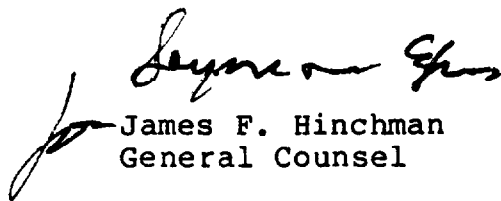
C.R.S. to change its proposed manufacturer after bid opening, and we deny this portion of the protest.

Southern also argues that C.R.S. was not responsible and should have been ineligible for award on this basis. The protester contends that C.R.S.' designation of Dodge as its chassis manufacturer indicates a lack of ability or expertise on C.R.S.' part, and also alleges that C.R.S. has an unsatisfactory performance record, including the termination of a prior contract for default, that should preclude the firm from receiving the award.

Here, notwithstanding Southern's prior default with another agency, the Army made an affirmative determination of the firm's responsibility. Unsatisfactory past performance does not necessarily render a firm ineligible for further contract awards, since performance history is only one of several factors an agency should take into account when considering a prospective contractor's responsibility. See Pan Am Aero, B-220486, Oct. 4, 1985, 85-2 CPD ¶ 382. The record shows that the contracting officer considered the information contained in the preaward survey, including a report on the termination of the prior contract, and concluded from the information presented that C.R.S. was a responsible prospective contractor.

Because a determination that a bidder is capable of performing a contract is based in large measure on subjective business judgments which generally are not readily susceptible to reasoned review, our Office will not review an affirmative determination of responsibility absent a showing of possible fraud or bad faith on the part of procurement officials or that definitive responsibility criteria in the solicitation were not met. 4 C.F.R. § 21.3(m)(5) (1989). Southern's allegations do not qualify for review under this standard. This portion of the protest is dismissed.

The protest is denied in part and dismissed in part.


James F. Hinchman
General Counsel